ADELAIDE INSTITUTE

PO Box 3300
Adelaide 5067
Australia
Mob: 61+401692057
Email: info@adelaideinstitute.org
Web: http://www.adelaideinstitute.org

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… more on Töben's bankruptcy proceedings …

but first a recent article generated by the Andrew Bolt case –
and bear in mind that the Töben case is also one of free expression:

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Misguided legislation puts the big chill into freedom of speech

James Allan

***The Australian* June 21, 2011 12:00AM**

LAST night nearly 600 people in Melbourne paid to attend an evening in support of free speech. The audience and speakers were also there to support columnist Andrew Bolt who has been taken to court for an opinion he voiced in the Herald Sun. The legislation that allows that sort of speech-stifling action is terrible legislation in my view, and so I was happy to be one of five invited speakers.

The gist of my remarks were that the fight for free speech and the liberty to speak up on public issues - issues not excluding who we want to receive affirmative action or group rights-type benefits that attach only to a special few in society - is a fight that will never go away. As former US president Andrew Jackson put it, "eternal vigilance is the price of liberty".

And those who attended were not just supporting Bolt but freedom of speech and of liberty more generally. Because let me blunt. In my view this Racial Discrimination Act, the part amended by the Racial Vilification Act that gives us section 18C and in some circumstances makes hurting someone else's feelings, is awful.

Think about it. Someone's subjective sense of being offended or humiliated has been made determinative of whether an unlawful act has been committed, subject to a few exemptions in section 18D.

That's a terrible statutory provision. It ought to be repealed. Now. Yes, a judge may, perhaps, find the exemptions apply. Yes, there is some wiggle room. But even forcing someone to have to litigate constitutes a massive chilling effect on free speech.

Let's face it. Not everyone has Bolt's cojones (and I know that may not have been the most felicitous way of putting the point). And not everyone has the resources of a big employer to back this sort of egregious litigation. These provisions create a sort of half-baked right not to be offended, a big mistake in my view.

So the fault lies with the legislature for passing these statutory provisions, not with the judges who have to interpret them. This is politically correct, pandering, group rights-inspired legislation.

The only sort of free speech that matters is the sort that offends some people somewhere. In a situation where all is agreement and harmony and people sitting in circles, holding hands, and singing Kumbaya, the concept of liberty and free speech does nothing. You will never have to fight for it meaning a freedom only to act or speak within the bounds of agreed opinion, good taste and proper decorum just isn't valuable. It doesn't carry with it any obvious good consequences.

The threat to our freedom of speech in the West today does not come from some Soviet-style secret police. No, it comes from turf-protecting bureaucrats who find themselves all of a sudden in the human rights game; it comes from people who want to create a right not to be offended.

Or at least not to be offended about the things that matter to them, because almost all the sorts of people who like the legislation being deployed against Bolt would be horrified to think that those in the US who are offended by the burning of the American flag ought to be able to prosecute the burners for their offended sensibilities. So what they really want is a right not to be offended, as long as it's the sort of things a good chardonnay-sipping member of the progressive elite ought to be offended about, nothing else.

But plain and simple that's a mistake. The only kind of free speech worth anything is the kind that leads to speech that offends people. And I say that knowing full well that none of us can be absolutists and there will always have to be some limits on speech, against counselling murder, say, or detailing how to make biological weapons.

But we ought to want as much scope as possible for people in a democracy to speak their minds. And precluding people from having and expressing an opinion on the problems with self-identifying as an indigenous person, or on who ought to be able to benefit from positive discrimination laws, well that's ridiculously inhibiting of free speech in my view.

I think that in any well-functioning democracy it is incumbent on all citizens to grow a thick skin. If you're offended, tell us why the speaker is wrong. Tell us why he or she is misguided or has defective moral antennae. Don't go to court and seek a court-ordered apology, or orders prohibiting publication of views you find offensive, or some two-bit judicial declaration.

And as a legislator under no circumstances pass statutes that allow for the creation of this mutant, half-baked right not to be offended. The very fact that people can be dragged through the courts - whatever the ultimate outcome - has a massive chilling effect on free speech. I know it. You know it. And our legislators ought to know it too, and do something about repealing this terrible piece of legislation.

At the end of the day those of us who want a considerable amount of scope for people to speak their minds are the optimists. We're the ones who are in the tradition of John Stuart Mill.

Recall the main ground that Mill gave for preferring very few limits indeed on what people can say. It was a consequentialist ground or justification. Leave people almost always free to speak as they like and in the ensuing battle of ideas truth will out, or in less hopeful terms, it is more likely to emerge than if people are silenced and issues are resolved by self-styled human rights experts or government appointees.

So for the benefit of getting at truth and true assertions we override hurt feelings, we ignore offended sensibilities, we discount the possibility of outright lies being spread, and we choose not to have our legislation accord with the world view of grievance industry mongers. Short of obvious, concrete, unavoidable harm to others, we let speech alone.

And underlying that rationale for lots of scope to speak our minds is a clear optimism about truth emerging in the tussle of ideas and ultimately an optimism about the views of the ordinary voter in a democracy.

In my opinion too many of the people who push these speech-limiting laws have simply lost faith in the views and beliefs of their fellow citizens. They have even lost a bit of faith in democracy itself.

Theirs is not the optimistic position. Ours is.

We are the citizens of one of the world's oldest and greatest democracies; we are not a collection of victims too offended to muster up the resources to reply on our own behalf when we disagree with others.

It is a badge of honour to live in a society that protects differences of opinion, including ones with which we vehemently disagree.

Which was why I was so delighted to have been asked to speak last night in Melbourne.

James Allan is Garrick Professor of Law at the University of Queensland

http://www.theaustralian.com.au/nationalaffairs/commentary/misguided-legislation-puts-the-big-chill-into-freedom-of-speech/story-e6frgd0x-1226078784220

Federal Court of Australia
SA Registry

Information Session: THE FEDERAL COURT RULES 2011

14 June 2011, 4:45-6:15 pm

Practitioners are invited to attend a presentation to introduce participants to the Federal Court Rules 2011, which will come into effect on 1 August 2011. The session will be presented by Justice Lander, Convenor of the Rules Revision Committee.

Topics will include:

- **The history and aims of the Rules Revision Project**
- **Style and structure of the new Rules**
- **Substantive changes including:**
  - **expert evidence**
  - **costs**
  - **genuine steps requirements**

When:
Tuesday, 14 June 2011
4:45 - 6.15 pm
Refreshments will be provided at the conclusion of the presentation.

Venue:
Level 5, Commonwealth Law Courts
3 Angas Street
Adelaide
Interested persons contact:

Vanessa Cartledge
Federal Court (SA Registry)
Telephone: (08) 8219 1034
Email: vanessa.cartledge@fedcourt.gov.au

CPD: If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you may be able to claim one unit of CPD for each hour of attendance, refreshment break not included.

Dr Fredrick Töben – Media Release 15 June 2011

1. On Tuesday, 14 June, 4:45pm – 6:15pm at the Federal Court of Australia, Adelaide Registry, I attended an Information Session conducted by Justice Bruce Lander, Convenor of the Rules Revision Committee.
Justice Lander on 13 May 2009 sentenced me to three months gaol because, officially, I was in contempt of court, but unofficially he bent to Jewish pressure and punished me for refusing to believe in the Holocaust-Shoah.

2. After the session, during refreshments, I was able to say hello to Justice Lander and he responded in kind.
This indicates to me that perhaps the judge will become aware of how the members of the Executive Council of Australian Jewry have misused Australian law to silence legitimate debate on important World War Two history.
After all, Justice Lander was one of three appeal judges who dismissed the case Jeremy Jones brought against Anthony Grigor-Scott, who had like me been given four basic injunctions that criminalises the questioning the official orthodox Holocaust-Shoah narrative, which states that Germans systematically exterminated European Jewry in homicidal gas chambers.

3. Such horrendous allegations against Germans, and against Australians of German descent, must be questioned for truth content.

4. I titled my 2006 Teheran International Holocaust Congress thus: "The Holocaust has no reality in space and time, only in memory". I now add to that: 'The Holocaust-Shoah is a Memory Fiction'.

5. I now augment this with the following: 'Anyone who believes and propagates the Holocaust-Shoah is either ignorant of the physical facts, a liar, or both'.

6. Media personalities who write about my Australian imprisonment always quote a comment of mine that aims to discredit and defame me.

7. On 2 June 2011, The Advertiser's Adelaide court reporter, Shaun Fewster, stated in his somewhat balanced article:
The court found Toben had acted "wilfully and contumaciously" by uploading articles that implied Jewish people offended by Holocaust denial were of "limited intelligence".

8. The author of the originating judgment, former Justice Catherine Branson, now President of Australia's Human Rights Commission, on 17 September 2002, handed down her 'summary judgment' against me.
Branson imposed the following injunctions on me, i.e. that I not publish "material which conveys the following imputations or any of them –
A. there is serious doubt that the Holocaust occurred;
B. it is unlikely that there were homicidal gas chambers at Auschwitz;
C. Jewish people who are offended by and challenge holocaust denial are of limited intelligence;
D. some Jewish people, for improper purposes, including financial gain, exaggerated the number of Jews killed during World War II and the circumstances in which they were killed."

9. It is from C. that individuals, set on defaming me, derive the comment attributed to me. As a teacher I would have thought that such attitude of mind, as expressed in injunction C. reflects more on what poverty of moral and intellectual values she embraces.

10. Notice that Catherine Branson has actually defamed me, smeared my good name, by formulating such injunction – and what worries me is that now she is looking after Australians' human rights. But as is typical of those human rights activists who cannot transcend their own biases, Branson attempts to project her own deficiency thinking on to others.

11. Further, in her judgment she made that disastrous comment about having found supporting thoughts from the Canadian Human Rights Commission and how it proceeded against Ernst Zündel.

12. The Andrew Bolt case will, hopefully expose the fundamental intellectual flaw that's inherent in Human Rights legislation, as is the case with our Racial Discrimination Act that leaders of Australia's Jewish community were responsible for drafting and then selling to Australia's parliamentarians.

13. One comforting thought is that she was at one time considered to become a judge of Australia's High Court, which I certainly hope will never happen.

Jews call for help on racism

By Gerard Ryle, *The Advertiser*, 10 December 1991

Australia's Jewish community called yesterday on the Federal Government to introduce protective legislation for minority groups following an increase in anti-semitic attacks. The president of the Executive Council of Australian Jewry, Mr Leslie Caplan, said the number of anti-semitic incidents had risen to 144 last year. They include the fire-bombing of synagogues, anti-Jewish graffiti and Jews being pelted with eggs in the streets. Mr Caplan, who is in Adelaide for the annual meeting of the executive council, said the biggest rise was in NSW. "Clearly racism is growing and it needs to be addressed by responsible government," he said. "You can tell the freedom of a country by the way it protects its minorities." Mr Caplan said there were incidents of rabbis in SA receiving abusive phone calls and of anti-Jewish graffiti being found on walls.

A photographer from The Australian, Mr Hugh Hartshorne, had his film confiscated yesterday by security staff at the meeting. He was accused of photographing the security system at the Nathan and Miriam Solomon Jewish Community Centre on the pretext of photographing Mr Caplan.
http://adelaideinstitute.org/newsletters/n435.htm

Lying by legislation

Padraic P McGuinness, *The Australian*, 12 November 1994

The art of political lying has received considerable public attention recently. But one form of it has been raised to a high point by the Federal Government virtually without notice. This is the legislative lie, whereby a piece of legislation is introduced into Parliament and pushed through as if it were of great urgency, while all the time the Government keeps on reassuring us that all the critics of the legislation are exaggerating or being paranoid and alarmist. If there should prove to be problems, why then, amendments will be introduced to deal with them.

Much the same argument has operated when new international conventions and treaties have come into force - there is nothing really to worry about. We are just doing what any good international citizen would do. The fact that very few other "good international citizens " in fact give international obligations the domestic force that we do, or use them to change the distribution of power laid down in a federal constitution, is airily dismissed. Indeed, most of the "good international citizens" who have happily signed international conventions have done so with not the slightest intention of implementing them domestically.

The racial hatred bill is the latest example of this. It was never given to the Opposition to read, and yet it is being told that there is really no threat to free speech in it. Why not then have discussed it with the Coalition in draft? Those critics of such legislation who cannot be categorised as being part of the Opposition are told that they are making far too much fuss, that the bill will really not prevent anyone from the free expression of ideas, especially if they are sincerely held. Whoever thought that racists were insincere?

The Government really has no justification for legislating in this way, by promise and reassurance. Careful legislative drafting and thorough parliamentary and public examination of any proposed law are needed before anyone can say with any reasonable assuredness what its effects might or might not be.

Even then nobody can predict exactly how the courts will construe the legislation when it is in force, and what parts of it they might find to be valid or invalid on constitutional grounds. It may indeed emerge that an act of Parliament could turn out to have quite draconian implications whatever the bland reassurances given by the Government. And without proper examination of the law in draft, it is difficult to know exactly what the Government really does intend as well as what the actual effect of the law will be.

There is a certain cavalier evasiveness which has become the stock in trade of the Attorney-General, Michael Lavarch, and his colleagues responsible for various laws. Lavarch does not have the legal knowledge, training or experience to know what most of the laws his department produces for him in fact mean. So we do not know, and no private-sector lawyer is allowed to know in good time, what the effect of any law is likely to be. It often takes months or years to work this out.

When the Government is caught out in its various grubby attempts to interfere with civil liberties it pretends that it is quite happy about it.

Thus the Political Broadcasting Act was intended to muzzle those critics of the Government who felt that their views were not adequately reported by the media, and who therefore would buy advertising space or time to present their views as they wished. This was a cynical device intended to save the Labor Party money by preventing the presentation of the views of its non-party critics. it would also have greatly magnified the powers of the media, especially TV, where Labor is notorious for bestowing favours on those who favour it. Fortunately, for free speech, the High Court decided that this was just not compatible with democracy.

What happened? The minister responsible immediately said that this was a wonderful thing, and pointed the way to a Bill of Rights, guaranteeing free speech and political liberties.

What happened to the Bill of Rights? A Human Rights (Sexual Conduct) Bill was introduced to prevent interference in the bedroom antics of Tasmanians. What did the rest of the community gain by way of extension and protection of their rights? Nothing at all.

The mealy-mouthed Lavarch began by saying that prosecutions were unlikely under his new racial hatred legislation. If so, why introduce it?

Yet he also conceded that somebody of American origin might have a case for compensation if he was called a "septic tank" in public. But he also claimed that the law would have a mainly educative function, even while proposing that the accused might be faced with hearings by the Human Rights and Equal Opportunity Commission. He argued that the fact that there has been no prosecutions under the NSW act meant that there was no evidence that free speech had been stifled.

Well, there have been few prosecutions under the Tasmanian law, which is supposed to have such a

terrible impact on homosexuals in that State - none at all in recent years. In fact even full and graphic confessions by homosexuals have failed to evoke prosecution. By his own logic, therefore, the Attorney-General would have to admit that there was nothing to worry about in the Tasmanian law. It is just there to educate people.

Of course the urgency of action against the Tasmanian law did not spring from the dishonest determination of the UN Human Rights Committee, but from the hope of gaining the support of the gay and lesbian lobbies and fomenting dissention in the Coalition, particularly in the Liberal Party, where there is an active gay lobby. However, there is indeed a danger that a less civilised Tasmanian government of the future, or a government stirred into action by populist extremists, might misuse the law if it is on the statute book.

It is equally possible, indeed likely, that once a racial hatred law is on the Federal statute book it will be misused at the behest of some lobby group which has successfully stacked a few branches of the Labor Party and wants to silence views which it finds offensive, even if they are expressed moderately and in the course of ordinary debate.

The only guarantee which can be believed in the good faith concerning civil liberties of a party which has tried to censor political free speech, which has tried to introduce a national identity card, and which recently commissioned a report (of the committee on the centenary of Federation chaired by Joan Kirner) which blithely proposed the establishment of a complete photographic record of the whole population.

What wouldn't a future authoritarian government give for a database like that!

Padraic P McGuinness

http://www.adelaideinstitute.org/HomePage28April2009/lying_by_legislation_09.htm

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Australian Jews –
Among the most important backers of Australia's Racial Vilification Bill
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Racial vilification bill: the real agenda

EDITORIAL, *NEWS WEEKLY*, July 2, 1994

The Keating Government's planned Racial Vilification Bill is one of the worst pieces of legislation ever put up in this country. Not only is it unnecessary for achieving its stated purpose - which is in the words of the Prime Minister, to "safeguard our record of tolerance" - it is also a direct threat to the rights of Australians to freely hold and express their own political opinions.

The bill has been widely condemned in the press. That is not necessarily a valid reason for opposing it - journalists are frequently as prejudiced in their own ways as any other interest group - but the arguments raised in relation to this particular piece of legislation are overwhelming.

The concept of incitement to racial violence or hatred - which the court wants to outlaw - is an extremely difficult one to enshrine in law. Unlike clear-cut anti-social acts like destruction or defacement of property, or creating a public nuisance in the streets (all of which are already illegal, and rightly so), the concept of incitement relies "as much on intention and attitudes as on spoken words". In other words, what is to be outlawed under this legislation is certain kinds of ideas. It is a thought control bill.

INTIMIDATION AND CONTROL

This is the real agenda of those who are promoting racial vilification legislation - to use the law to intimidate, and thus to control the expression of opinions with which they disagree. No credibility can be placed in the claim by supporters of this bill - because no evidence has been advanced for it - that there has been any recognisable increase in racial vilification of ethnic groups which might justify a new law. The Minister for Immigration and Ethnic Affairs, Senator Bolkus has made an unsupported assertion that the offences to be outlawed by the bill " are of such magnitude that the criminal sanction is the most appropriate one". But remarkably he did not say what these offences were.

It is true that at the time of the Gulf War there was a brief spate of attacks on some Islamic communities in Australia. Nevertheless it is notable that it is not the Arab or Islamic communities which are the strongest proponents of the racial vilification bill. Where Australian Arab community representatives have publicly addressed the issue of Mr. Keating's bill, they have generally emphasised the importance of education, not criminal sanction, in overcoming racial prejudice. Mr A. Elkotrib, chairman of the Australian-Arabic Brotherhood Charitable association, went further: "We are concerned that the proposed legislation will limit the democratic right of freedom of speech that is accepted as the foundation of Australia's multicultural society."

According to former Labor Cabinet Minister Peter Walsh, impetus for the racial vilification bill comes from a "cell of social engineers in the Attorney-General's Department who, with a few other fringe groups, have been pushing for such legislation". He also says the bill is aimed at limiting what it is permissible to think, rather than what it is permissible to do. Criticising the Prime Minister for his support of the bill, he wrote:

"Both violence and incitement to violence, racial or otherwise, is already a crime - a fact acknowledged in Keating's May 28 speech by reference to long-term jail

sentences handed down in Perth. He went on, however, seemingly to deplore the fact that these people were prosecuted only for what they did, not for what they believed."

A further important argument advanced by Peter Walsh was that whatever little racial conflict or violence does exist in contemporary Australia, most of it is "between ethnic groups, rather than immigrant groups and the mainstream population, against which the social engineers are aiming this legislation." The conflict over Macedonia is a prime example of this point.

What's more, responsibility for some of this conflict can fairly be sheeted home to the very Government which is promoting racial vilification legislation. This was pointed out by Monash University political science lecturer Max Teichmann, in a further attack on the bill:

"The only real threat of racial violence here was created by the Federal Government when it played off the Greeks and the Macedonians and then welshed on them", he said. "The Immigration Minister, Senator Nick Bolkus, was a key factor in that fiasco."

"The main occasion for racist utterances here was when 50,000 Greeks charged down Bourke Street looking for Bolkus, with important sanctions in mind, only pausing occasionally to slag the Macedonians"

"Luckily, they ran into our Jeff [Victorian Premier, Mr. Kennett], who promised them sunshine right through Winter and a mini-GP in every back yard. otherwise the souvlaki could have hit the fan."

Max Teichmann said it was "either obtuse or insulting" to Australians to suggest that events that took place in Germany after 1930, and in parts of Europe since, could happen here. "To use the new lingo of Mark Liebler, it is on the edge of a racial slur"

It is significant that Mr. Teichmann chose to mention Mr. Liebler in this context because it is Mr. Liebler and other prominent representatives of the Australian Jewish community who have been among the most important backers of the racial vilification bill. Nor is it co-incidental that when Mr. Keating chose recently to re-ignite debate on the bill, he did so at a conference of the Zionist Federation of Australia. Remarkably, the Liberals' Deputy Leader Peter Costello who was also in attendance at the conference refrained from distancing his party from Mr. Keating's bill. Thus it appears to have bipartisan support.

Those who have cause to publicly disagree with these Jewish representatives - as this newspaper did in criticising certain aspects of the push for war crimes legislation a few years ago - have in the past found themselves unjustly castigated as "anti-Semitic". If those who are willing to toss around such labels without just cause are to be allowed to enshrine their own political agendas in Australian law, we are all in trouble.

http://www.adelaideinstitute.org/HomePage28April2009/jewish_racial_vilification_09.htm

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Robert Macklin

Holocaust's new religion adds fire to old conflict

***Canberra Times*, 14 October 2000**

It would be easy for those of us who are not numbered among the faithful to blame old religions for the never-ending horror of the Middle East.

Easy, but inaccurate.

Certainly, religious difference underlies the conflict between Jew and Palestinian just as it does between Muslim and orthodox Christian in the Balkans, Catholic and Muslim in East Timor, Protestant and Catholioc in Northern Ireland, and Hindu and Buddist in Sri Lanka.

Indeed, if there is a force for evil in the world, one might fairly suggest on the evidence that it resides within the general heading of religion.

But the key to the struggle between Palestinian and Jew is more recently fashioned. It derives not so much from ancient perceptions of a chosen people as from a devotion to, and an obsession with, its most terrible consequences – the Holocaust.

They will not readily admit it, but for Israelis, the murder of six million Jews in the Nazi death camps is the real motivating force behind today's conflict. To them, the Holocaust is not an historical episode. It is a mantra of shame and outrage that rises to consciousness anew every day.

If you doubt this, consider how often you have heard the story told and retold from every imaginable point of view. The literature, the documentaries, the feature films and the television series that centre on the Holocaust are almost beyond measuring. And there is no sign whatever of any diminution of the flow.

On the contrary.

Every Jewish novelist must visit the area before his or her work is taken seriously by his or her religious comparison.

Every Jewish film-maker must make the same obeisance. Steven Spielberg, who directed four of the top-10 box office movies ever made, needed Schindler's List to give him gravitas in his community. Then he went one better – more than 50 years after the event, a documentary of the Holocaust survivors truly breathtaking in its scope.

No weekend passes without yet another book review of a non-fiction work based on the Holocaust.

Even when the general subject seems widly different, the Holocaust can appear without warning. For example, in the BBC TV series Shooting the Past, currently screening on the ABC, a character will tell a

story about a series of photographs – and the pictures reveal a heart-wrenching aspect of the Holocaust.

Right-wing oddballs like David irving are charged with "Holocaust denial" in exactly the same way heretics are charged with abusing an article of faith. Indeed, this week, after a complaint from the Jewish community, Australia's Human Rights Commissioner Kathleen McEvoy ordered the Adelaide Institute to close its web site on the same grounds.

Newspaper columnists who dare to criticise some aspects of Israeli behaviour are labelled anti-Semitic.

The result is a new form of religion, one in which the original faith of history is suffused with a rush of blood from the Holocaust and transformed into a twisted creed that sets Israeli pulses racing.

Thus, anything that stands between Israelis and their aspirations becomes an offence against the Holocaust, an attack on the memory of those who died and did not fight to run away, but walked into the showers and brought shame to their people; shame and an unquenching outrage.

The proponents of this new religion, the "Holocaustians", are not just in the Government and the settlements of Israel. They are important contributors to American political campaigns, not least those of Hillary Clinton in New York and Al Gore in the presidential contest.

This provides powerful influence at the highest echelons of the world's superpower, which can only aggravate the situation in the streets of Gaza and the West Bank.

One result is a sad and terrible paradox. The great crime of the Holocaust is that the Germans so casually dehumanised the Jews they marked for genocide. They stripped them of everything – possessions, family, dignity, humanity and finally life itself. They made them lesser creatures.

And today the Israelis make lesser beings of the Palestinians. They deny them human rights. They oppress them as if they had some right, some higher duty, to do so.

They do not understand that in their rage over the Holocaust, they are adopting many of the attributes of their erstwhile oppressors.

They are not building poison showers. But they are making the place of the Palestinians a living hell, a place of humiliation and, for some, a place of death.

In these circumstances, the calls for a return to the Middle-East peace process are an exercise in futility.

How does it profit the Palestinians to accept some Israeli "compromise" when the Israelis hold all the cards, all the power, all the big guns, and a seething resentment against their very presence.

For Yasser Arafat and his ilk are not negotiating with men and women of goodwill seeking some accommodation to bring permanent happiness to all. They are wrestling with the ghosts of the Holocaust.

Andrew Bolt

Punishing weird ideas can backfire

***Herald Sun*, Monday November 13, 2000**

To see how our over-bossy complaints industry can cause more harm than good, check the Executive Council of Australian Jewry's bid to close down the web site of Dr Fredrick Töben.

ECAJ wants the Federal Court to punish Dr Töben for refusing to obey the Human Rights and Equal Opportunity Commission, which has condemned him for publishing anti-Semitic material and told him to stop.

It is doing the same with Launceston zealot Olga Scully, who stuffs letterboxes with similar rubbish, and is also ignoring HREOC.

True, Dr Töben is a worry. His Adelaide Institute website claims the Holocaust is a hoax, and last year he dared German authorities to jail him for defying laws banning Holocaust denial. They did.

But what has the campaign against him achieved?

Since 1997, he has been mentioned in 18 Melbourne daily newspaper reports – and each time either because of his jailing or Jewish bids to get the law to shut him up.

His "martyrdom" just gives him free publicity, as one newspaper admitted by introducing a feature on him like this: "Holocaust denier Fredrick Töben was jailed in Germany this week. Katherine Towers reports on the organisation he heads."

On Friday, EJAC's announcement that it would take Dr Töben to court inspired on newspaper to publicise his website, saying it had pictures of Auschwitz with captions claiming: "The four alleged gas-induction holes do not exist! No holes – no Holocaust!" He would have loved it.

Same story with Mrs Scully. All 12 mentions of her in Hobart's Mercury and Sunday Tasmanian since 1996 came as a result of attempts to silence her or Dr Töben.

Worse, Dr Töben and Mrs Scully now pose as victims of a Jewish bid to deny them free speech, and there's sadly just enough truth in that to make them a real menace.

Remember this from *The Australian*, Thursday 16 December 1999?

Jailed historian revises Nazi denial

MATTHEW SPENCER

AFTER seven months in a German jail, revisionist historian Fredrick Toben flew home to Adelaide yesterday and indicated he may stop pushing his claim that the Holocaust was a myth.

The director of the Adelaide Institute kissed the floor of the Adelaide International Airport and said he was weary from his stint in jail.

Dr Toben, 55, said he would not continue to push his views on the Holocaust if it became a criminal offence in Australia, as he did not want to be dragged through the courts again.

Federal legislation, which comes into effect in January, will establish a process to stop material that breaches anti-discrimination laws appearing on Australian Web sites.

"What we have to do now is emphasise the freedom of speech issue for Australia because the bill is going to terminate us, most likely," Dr Toben said.

The Human Rights and Equal Opportunity Commission is hearing a complaint by the Executive Council of Australian Jewry that material on the Adelaide Institute's Web site was in breach of the 1995 Racial Hatred Act.

Dr Toben was sentenced by a German court last month to 10 months' jail for inciting racial hatred and defaming the memory of people murdered in Nazi death camps.

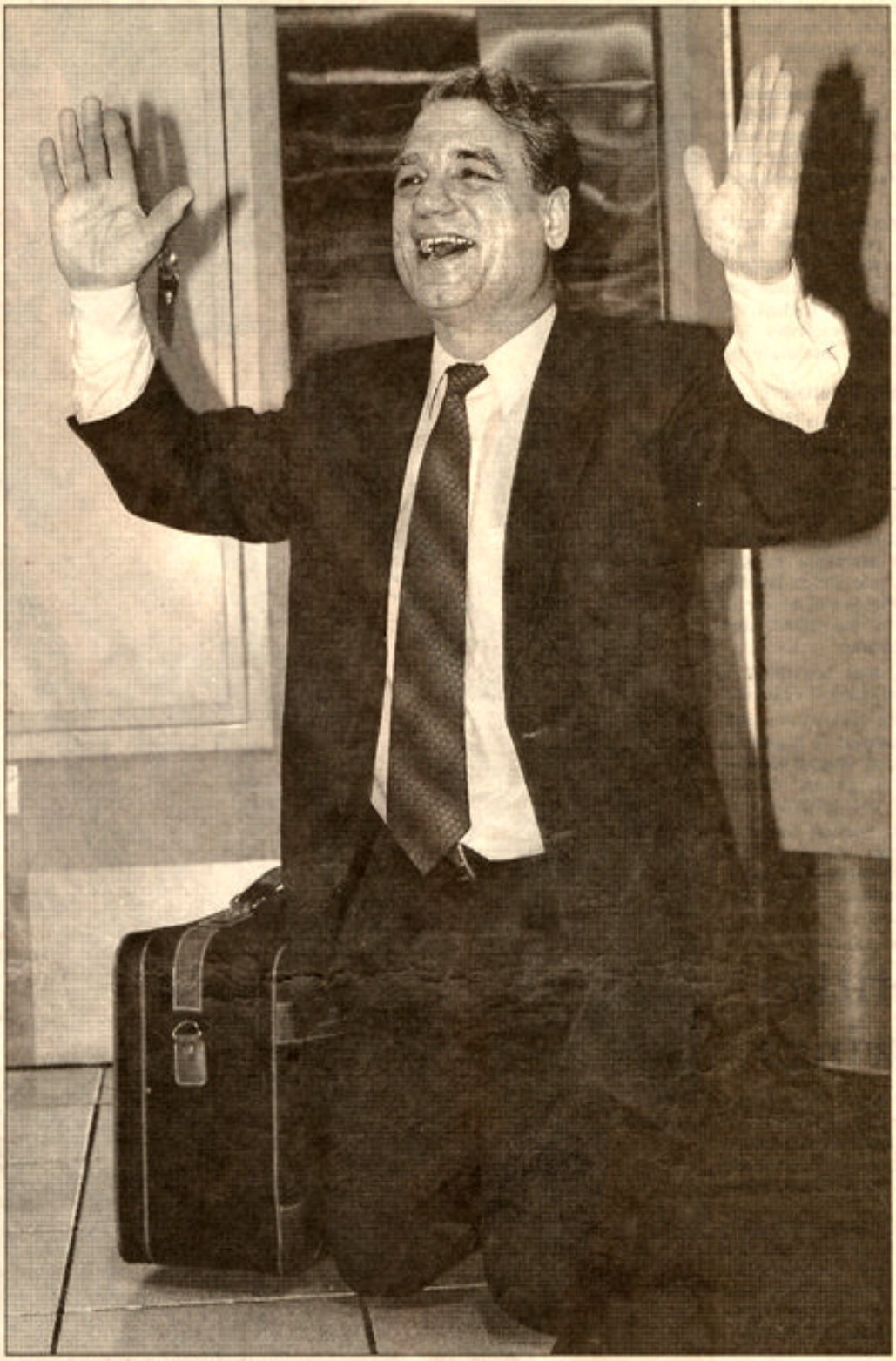
The charges were laid after he challenged the severity of the Holocaust through letters and the Adelaide Institute Web site.

He was freed after German sympathisers raised $5000 bail, but he had already served seven months on remand.

But Dr Toben said the experience verified his belief that the Holocaust was a hoax.

"It's been worth it because the Zionists have lost the plot. We have won the argument," Dr Toben said. "If it's a battle, and I think it is, it's a massive battle. We have won the battle."

The historian, who is considering a national speaking tour, will return to Germany to face an appeal in the new year.



Home free: Revisionist historian Dr Toben arrives at Adelaide airport yesterday

Picture: TONY LEWIS

… now back to the present … an update …

Holocaust "revisionist" Fredrick Toben political dream 'at risk'

Sean Fewster Court Reporter AdelaideNow June 15 2011 1:24pm

HOLOCAUST "revisionist" Fredrick Toben has told a court he is the victim of prejudice and that he intends to stand for Federal Parliament.

Toben appeared in the Federal Court today, seeking to oppose a bankruptcy action filed against him by Jeremy Jones AM.

Holocaust 'revisionist' Fredrick Toben speaks to media outside the Federal Court during an earlier hearing. Pic: Greg HiggsSource: AdelaideNow

The controversial former educator owes Mr Jones, a past president of the Executive Council of Australian Jewry, $56,000 in court costs. Mr Jones successfully sued Toben for defamation for uploading articles that implied Jewish people offended by Holocaust denial were of "limited intelligence".

Toben later served a three-month jail term for continuing to upload the material in defiance of a Federal Court order.

Today Dr John Walsh of Brannagh, for Toben, said the bankruptcy claim had been filed earlier this year.

He said his client instructed his then-solicitors to respond to it, but the firm failed to act within 21 days as required by law.

He asked the court to extend Toben's time to oppose the bankruptcy. "It's not that he's trying to avoid paying the money, he simply does not want to be declared bankrupt," he said. "There are a number of reasons why, apart from shame... he's a pensioner who's only asset is his house. He wishes to stand for Parliament, at the next Federal election, which he cannot do as a bankrupt."

Dr Walsh of Brannagh said his client would suffer prejudice if his application was refused. "He's not running away, he wants the matter to resolve without bankruptcy," he said. "What I'm appealing to, here, is justice."

Justice Anthony Besanko said there was "no evidence before me" suggesting the $56,000 debt was inappropriate. He put the matter off until Monday, when he will decide whether or not to grant Toben an adjournment to seek such evidence.

- notice by 3pm the change in tone of the article

Holocaust denier Fredrick Toben's political dream at risk

AAP, June 15, 2011 3:00pm

HOLOCAUST denier Fredrick Toben fears being forced into bankruptcy will end his hope of running for federal parliament.

Mr Toben appeared in the Federal Court in Adelaide today trying to oppose a bankruptcy motion against him by former president of the Executive Council of Australian Jewry, Jeremy Jones. Mr Jones wants to enforce a claim for $56,000 in court costs after successfully suing Mr Mr Toben for defamation for publishing anti-semitic material on his Adelaide Institute website.

Mr Toben's barrister John Walsh said his client's former lawyers had failed to respond to the bankruptcy claim within the 21 days required.

He told Justice Anthony Besanko that giving Mr Toben a chance to oppose the motion was a matter of justice.

"It's not that he's trying to avoid paying the money, he simply does not want to be declared bankrupt," he said. "He wishes to stand for parliament, at the next federal election, which he cannot do as a bankrupt."

Justice Besanko said the costs had already been "significantly" reduced and there was no evidence before him that would be grounds to challenge the sum of $56,000.

He will rule on Monday whether to grant Mr Toben an adjournment to seek evidence that might support his claim.

Holocaust denier wants to settle

***Sarah Malik, AAP*, June 20, 2011**

Holocaust denier Fredrick Toben says he doesn't want to be declared a bankrupt and can settle a bankruptcy order against him by a Jewish leader.

Toben told the Federal Court in Adelaide on Monday he wanted to settle a bankruptcy motion made against him by Jeremy Jones, former president of the Executive Council of Australian Jewry.

"I am trying to settle the matter, I do have the money (to pay Mr Jones)," he told the court via video link.

"If there is a refusal to settle, if that is there, then this whole action is a abuse of process. I do not want to be declared a bankrupt."

The matter was adjourned to July 4.

Mr Jones wants to enforce a claim for $56,000 in court costs after successfully suing Toben for defamation for publishing anti-semitic material on his revisionist Adelaide Institute website.

Toben's barrister John Walsh told the court last week that Toben's former lawyers had failed to respond to the bankruptcy claim within the 21 days required.
He said Toben wanted a chance to avoid bankruptcy because he wished to stand for parliament at the next federal election.
Toben was sentenced to three months' jail in 2009 for ignoring a 2002 court order preventing him publishing anti-semitic material on his website.
http://news.smh.com.au/breakingnewsnational/holocaust-denier-wants-to-settle-20110620-1gb9y.html

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From: Fredrick Toben toben@toben.biz
Sent: Wednesday, 22 June 2011 11:09 AM
To: smalik@aap.com.au
Subject: Your article

Dear Sarah Malik

With reference to your article, below, permit me to point out some inaccuracies therein:

1. I am not a 'Holocaust denier' - I am a thinker, philosopher, ethicist, academic, free expression advocate, publisher, and author of five books on the 'Holocaust-Shoah' controversy. It is too cheap to just use this label on my work. Perhaps 'Holocaust questioner' is more accurate, b ut then that is already contentious because anyone whor efuses to believe in the official version of the 'Holocaust-Shoah' will be branded so that an open discussion does not develop.

2. Jeremy Jones is the individual who brought the action before the HREOC, then FCA, in 1996 on behalf of the Executive Council of Australiasn Jewry. As you are perhaps aware this is a multi-national cartell that suppresses free expression in many countries on matters affecting Jews globally and locally. Andrew Bolt was lucky because he had the Murdoch empire behind him and he attacked the Aboriginal industry - so I can predict that justice Mordecai Bromberg will let him off on grounds of Bolt having used his 'artistic judgment' when writing alleged offensive material, which caused individuals to feel hurt!

3. Your sentence: "...after successfully suing Toben for defamation for publishing anti-semitic material..". I wish it had been a defamation action, but as in the Bolt case my case cam,e under the Racial Discrimination Act where rules of evidence, etc. are thrown out the window. What matters is that someone says they have experienced 'hurt feelings' by reading material we published. Anyone can have hurt feelings.

4. likewise with the final sentence: "Toben was sentenced to three months' jail in 2009 for ignoring a 2002 court order preventing him publishing anti-semitic material on his website." The sentence was for 'contempt of court' because Justice Catherine Branson, now President of the Human Rights Commission, gave me four orders that denied me to express doubt or question basic physical facts about the 6 million deaths, the existence of the homicidal gas chambers at Auschwitz, etc.

Perhaps you can correct some of these matters if you cover the 4 July 2011 hearing.

Sincerely – Dr Fredrick Töben - currently in Sydney.

And here is some of Töben's correspondence with the court and with Steven Lewis, Counsel for the Executive Council of Australian Jewry. Note the comment made by Lewis in regards to his sending information to all concerned: **"It is also not appropriate for you to send copies of your correspondence to the court."**
However, when you are dealing with someone you do not trust, and someone who commands the media narrative of the Töben case, then it is highly appropriate to send matters to all concerned. Lewis is here invoking the legal privilege principle, which is appropriate if you have a trusting relationship with your opponent, which is not the case when dealing with individuals who use all the legal trickery that's at their disposal in order to win a case. Settlement or compromise is not an option for those schooled on Talmudic dialectics. **We should also recall that Australia's current PM once worked for Slater & Gordon!**

From: Fredrick Toben [mailto:toben@toben.biz]
Sent: Friday, 17 June 2011 12:17 PM
To: sareg@fedcourt.gov.au
Cc: 'Steven Lewis'
Subject: Matter No: SAD 69 & 73 of 2009

Dears

Would you kindly forward the following message to Justice Besanko's Associate:

Thank you.

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Dear Associate

I would be pleased if you convey the following to His Honour:

On Monday, 20 June 2011, at 10 am AEST, 9:30am Adelaide time, I shall be in attendance at the Federal Court of Australia, Sydney Registry, with the intention of advising His Honour that I am in Sydney for the purpose of settling the $56,435.72 court costs debt as ordered to do by Registrar Bochner in the FCA Adelaide Registry on 22 December 2010.

Please acknowledge receipt of this email.

Sincerely, Dr Fredrick Töben

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From: Fredrick Toben [mailto:toben@toben.biz]
Sent: Monday, 20 June 2011 2:09 PM
To: customer.service@fmc.gov.au
Cc: slewis@slatergordon.com.au
Subject: Matter No: SYG 855/2011 - Federal Magistrates Court, Sydney, 21 June 2011 Creditor's Petition

Matter No: SYG 855/2011 - Federal Magistrates Court, Sydney, 21 June 2011 Creditor's Petition

Dear Sydney Registry, FMC:
I am sending this email to you because I am a legally unrepresented Respondent and I request that you forward this email to Registrar Hegde's Associate so that it may be passed on to Ms Hedge.
Kindly also note that I shall be in personal attendance at tomorrow's hearing, Tuesday 21 June 2011, Court 5D Level 5 John Maddison Tower, when Registrar Hedge deals with the matter.
Sincerely
Dr Fredrick Toben
Adelaide - currently in Sydney
==========
----- Original Message -----
From: Fredrick Toben toben@toben.biz
To: slewis@slatergordon.com.au
Sent: Mon 20/06/11 1:37 PM
Subject: Fwd: Re: Fwd: Jones ats Toben
Mr Lewis
Could you please explain and elaborate on this sentence of yours:
"Please be aware that acceptance of the amount stated in the bankruptcy notice is ... and is not in respect of any other claim my client has or may have against you."
Fredrick Toben
==========
----- Original Message -----
From: Steven Lewis slewis@slatergordon.com.au
To: Fredrick Toben toben@toben.biz
Sent: Mon 20/06/11 12:32 PM
Subject: Fwd: Jones ats Toben
It is incorrect to state that there is a settlement. It is also not appropriate for you to send copies of your correspondence to the court.
If you wish to pay the amount set out in the bankruptcy notice you are invited to do so. The trust account details are:
Account Name: Slater & Gordon Ltd NSW Trust Account No 2
Bank: Westpac Banking Corporation
BSB: 032 000
Acct No: 56 4056
Ref: 283157 Jones
If these funds are received then it is appropriate that your motion filed on 13 April 2011 in the Federal Court be dismissed with an order that you pay our costs. Further, the creditors petition can then be dismissed, again, with an order that you pay our costs.
Please be aware that acceptance of the amount stated in the bankruptcy notice is on the basis that you have paid the amount as stated in the certificate of taxation dated 15 September 2010 pursuant to the order of the court made on 13 August 2009 and is not in respect of any other claim my client has or may have against you.
Yours faithfully,
Steven Lewis
Practice Group Leader | Commercial Litigation
SLATER & GORDON LAWYERS
Level 11, 51 Druitt Street | Sydney 2000
T (02) 8267 0626 | F (02) 8267 0650
slewis@slatergordon.com.au |
www.slatergordon.com.au
Settlement Offer 20 June 2011 in FCA Matter No: SAD 69 & 73 of 2009
Dear Mr Lewis
1. I refer to today's proceedings No: SAD 69 & 73 of 2009 in the FCA, Adelaide Registry, and per video link to FCA, Sydney Registry, before Justice Besanko, and his Honour's directions regarding the settlement of the case as we agreed.
2. Please provide us without delay your bank account details, which includes the name of the Bank, the branch and the BSB and Account Numbers, so that we can electronically transfer the funds to the nominated account.
3. As soon as we receive the account details we shall deposit the required amount.
4. A copy of this email will be sent to the Associate of Justice Besanko so His Honour is informed of our agreement.
5. I am also sending a copy of this email to Registrar Hedge of the Federal Magistrates Court where this matter continues as SYG855/2011 and has been set down to be heard tomorrow, 21 June 2011, at 9.45 AM, Court 5D, level 5 John Maddison Tower, 88 Goulburn Street, Sydney.
6. Please note my mobile number: 04170 88217, which is available until 9 PM tonight.
Sincerely
Dr Fredrick Töben - currently in Sydney
*****and more paper work awaits filing in court****